KHAIRIL ANUAR MUDA & ORS v. SULONG MUDA & ANOR

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
ZABARIAH MOHD YUSOF JCA
HARMINDAR SINGH DHALIWAL JCA
[CIVIL APPEAL NO: T-02(NCVC)(W)-37-01-2016]
30 OCTOBER 2017

SUCCESSION: *Distribution of estate – Action by beneficiaries – Agreement entered into between administrators and certain beneficiaries regarding petrol stations owned by deceased – Beneficiaries sought for declaration that agreement was void – Agreement involved minors – Whether mothers who signed on behalf of minors did so as guardians of property of minors – Whether s. 15 of Guardianship of Infants Act 1961 applied – Whether leave of court obtained for proposal of minors' property – Whether agreement void*

SUCCESSION: *Distribution of estate – Action by beneficiaries – Agreement entered into between administrators and certain beneficiaries regarding petrol stations owned by deceased – Beneficiaries sought for declaration that agreement was void – Petrol station built on deceased's own land – Whether land estate property upon death of deceased*

SUCCESSION: *Distribution of estate – Action by beneficiaries – Agreement entered into between administrators and certain beneficiaries regarding petrol stations owned by deceased – Beneficiaries sought for declaration that agreement was void – Limitation of action – Recovery of trust property by virtue of s. 22(1)(b) of Limitation Act 1953 – Whether limitation period applied – Whether action barred by limitation*

The plaintiffs and the defendants were the beneficiaries of the deceased who had died intestate. The first and second defendant were appointed as administrators to the deceased's assets. The deceased owned Shell Petrol Stations in Cabang Tiga, which was built on a property belonging to Shell, and in Kuala Nerus, which was built on a property belonging to the deceased. The first and second defendants entered into an agreement dated 12 December 1991 ('1991 agreement') signed by the fourth, 15th, 16th and 17th plaintiffs that contained the terms, *inter alia* (i) that the Shell Petrol Station Cabang Tiga will be handed over to a third party represented by the 16th plaintiff; and (ii) that the Shell Petrol Station Kuala Nerus will be handed over to the second defendant. Years later, in 2014, the plaintiffs filed the instant suit seeking for a declaration that the 1991 agreement was invalid, null and void. They also sought for an order that the administrators of the estate of the deceased be authorised to take control of the two petrol stations in question and the profits from the business be divided among the plaintiffs and the defendants according to their entitlement as declared in the *hukum faraid* dated 11 July 2006 after deducting all costs and expenses incurred. The High Court held that (i) the plaintiffs' claim was barred by the Limitation Act

1953 ('LA 1953') as it was outside the six-year period set out in s. 6 of the LA 1953; (ii) that the 1991 agreement was valid and binding on all the parties even though eight of the beneficiaries were minors at the time the agreement was signed, as the mothers of the minors had signed on behalf of the minors; and (iii) that the business of the two petrol stations rightfully belonged to the defendants as they had complied with the terms of the 1991 agreement and had paid off all the outstanding debts in respect of the businesses after the death of the deceased. Hence, the High Court dismissed the plaintiffs' claim and allowed the defendants' counterclaim for a declaration that the plaintiffs had no interest in the businesses. Hence, the plaintiffs appealed.

Held (allowing appeal; setting aside order of High Court)
Per Harmindar Singh Dhaliwal JCA delivering the judgment of the court:

(1) The action commenced by the plaintiffs was an action by beneficiaries to recover the trust property from a trustee by virtue of s. 22(1)(b) of the LA 1953. The trust property in the form of the business of the two petrol stations was still in the possession of the trustees. Thus, no limitation period applied. The judge was plainly wrong in his finding that the plaintiffs' action was barred by limitation. (paras 10 & 11)

(2) The mothers who signed on behalf of the minors were obviously doing so as guardians of the property of the minors. It was therefore plain that s. 15 of the Guardianship of Infants Act 1961 applied in the circumstances and since no leave of the court was obtained for such disposal of the minors' property, the disposal as set out in the 1991 agreement was void. (para 18)

(3) In the case of the Kuala Nerus petrol station, the deceased had used his own land to develop the station. It could not be denied that the land of the deceased became estate property upon the death of the deceased. Hence, the judge was plainly in error when he declared that the business, and consequently the land on which the business was situated, was not part of the estate. Thus, the High Court decision was plainly wrong and appellate interference was warranted. (paras 20 & 21)

Bahasa Malaysia *Headnotes*

Plaintif-plaintif dan defendan-defendan adalah pewaris-pewaris si mati yang telah meninggal dunia meninggalkan harta-harta yang tak berwasiat. Defendan pertama dan kedua dilantik sebagai pentadbir-pentadbir aset-aset si mati. Si mati memiliki Stesen Minyak Shell di Cabang Tiga, yang dibina atas tanah milik Shell, dan di Kuala Nerus, yang dibina atas tanah milik si mati. Defendan pertama dan kedua memasuki satu perjanjian bertarikh 12 Disember 1991 ('perjanjian 1991') yang ditandatangani oleh plaintif keempat, ke-15, ke-16 dan ke-17 yang mengandungi syarat-syarat, antara lain, (i) bahawa Stesen Minyak Shell Cabang Tiga diserahkan kepada pihak ketiga yang diwakili oleh plaintif ke-16 dan (ii) bahawa Stesen Mintak Shell Kuala Nerus diserahkan kepada defendan kedua. Beberapa tahun kemudian,

pada 2014, plaintif-plaintif memfailkan guaman ini untuk menuntut pengisytiharan bahawa perjanjian 1991 adalah tidak sah dan terbatal. Mereka juga menuntut perintah supaya pentadbir-pentadbir estet si mati diberi kuasa untuk mengawal dua buah stesen minyak tersebut dan keuntungan hasil perniagaan itu diagihkan antara plaintif-plaintif dan defendan-defendan mengikut hak masing-masing seperti yang diisytiharkan dalam *hukum faraid* bertarikh 11 Julai 2006 selepas menolak segala kos dan perbelanjaan yang ditanggung. Mahkamah Tinggi memutuskan (i) tuntutan plaintif-plaintif dihalang oleh Akta Had Masa 1953 ('AHM 1953') kerana luar tempoh enam tahun yang diperuntukkan oleh s. 6 AHM 1953; (ii) bahawa perjanjian 1991 adalah sah dan mengikat semua pihak-pihak walaupun lapan pewaris adalah kanak-kanak bawah umur pada waktu perjanjian ditandatangani, kerana ibu-ibu mereka telah menandatanganinya bagi pihak kanak-kanak bawah umur; dan (iii) perniagaan kedua-dua stesen minyak adalah milik defendan-defendan kerana mereka telah memenuhi syarat-syarat perjanjian 1991 dan telah membayar segala hutang berhubungan perniagaan itu selepas kematian si mati. Oleh itu, Mahkamah Tinggi menolak tuntutan plaintif-plaintif dan membenarkan tuntutan balas defendan-defendan untuk pengisytiharan bahawa plaintif-plaintif tidak mempunyai kepentingan dalam perniagaan itu. Oleh itu, plaintif-plaintif merayu.

Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Tinggi)

Oleh Harmindar Singh Dhaliwal HMR menyampaikan penghakiman mahkamah:

(1) Tindakan yang diambil plaintif-plaintif adalah tindakan oleh pewaris-pewaris untuk mendapatkan semula harta amanah daripada seorang pemegang amanah di bawah s. 22(1)(b) AHM 1953. Harta amanah dalam bentuk perniagaan kedua-dua stesen minyak masih dalam milikan pemegang-pemegang amanah. Oleh itu, tiada tempoh had masa terpakai. Hakim terkhilaf dalam dapatan beliau bahawa guaman plaintif dikekang oleh had masa.

(2) Ibu-ibu yang menandatangani bagi pihak kanak-kanak yang bawah umur dengan jelas berbuat demikian sebagai penjaga-penjaga harta kanak-kanak bawah umur. Jelas bahawa s. 15 Akta Penjagaan Kanak-Kanak 1961 dipakai dalam keadaan tersebut dan oleh kerana tiada kebenaran diperoleh oleh mahkamah untuk cadangan harta kanak-kanak bawah umur, perjanjian 1991 adalah terbatal.

(3) Dalam kes Stesen Minyak Kuala Nerus, si mati telah menggunakan tanahnya sendiri untuk membangunkan stesen itu. Tidak boleh dinafikan bahawa tanah si mati menjadi sebahagian estet harta sebaik sahaja si mati meninggal dunia. Oleh itu, hakim jelas terkhilaf apabila mengisytiharkan bahawa perniagaan, dan seterusnya di mana tanah perniagaan itu terletak, bukan sebahagian estet. Oleh itu, keputusan Mahkamah Tinggi jelas salah dan mewajarkan campur tangan rayuan.

Case(s) referred to:
Leha Jusoh v. Awang Johari Hashim [1977] 1 LNS 59 FC ***(refd)***
Loo Cheng Suan Sabrina v. Khoo Oon Jin Eugene [1994] 1 LNS 285 HC ***(refd)***
Mohd Ali Jahn Yusop Sahibjahn & Anor v. Zaleha Mat Zin & Anor [1995] 1 CLJ 533 HC ***(refd)***
Mohori Bibee v. Dhurmodas Ghose (1903) 30 Cal 539 ***(refd)***
Panchanath Ratnavale v. Sandra Segara Mahalingam & Ors [2012] 1 LNS 167 HC ***(refd)***

Legislation referred to:
Age of Majority Act 1971, s. 2
Contracts Act 1950, ss. 10, 11
Guardianship of Infants Act 1961, s. 15
Limitation Act 1953, ss. 6, 22(1)(b)
The Indian Contracts Act 1872 [Ind], ss. 10, 11

For the appellants - Abdul Aziz Hasan & Fozi Addhwa Mohamed Fozi; M/s Nordin Kassim & Aziz
For the respondents - Mohd Zubir Abu Bakar, Wan Mohd Haidi Wan Jusoh & Wan Ahmad Faiz Wan Abdullah; M/s Jailani Zubir & Partners

[Editor's note: Appeal from High Court, Kuala Terengganu; Civil Suit No: 22 NCVC-35-11-2014 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Harmindar Singh Dhaliwal JCA:

[1] This is an appeal against the decision of the High Court at Kuala Terengganu delivered on 30 November 2015 after a full trial. The High Court had dismissed the plaintiffs' claim and allowed the defendants' counterclaim with costs of RM10,000.

[2] This appeal was heard on 6 July 2017. After hearing the parties and taking into consideration the written submissions, we allowed the appeal and set aside the order of the High Court. Our reasons for doing so now follow. Where convenient, the parties will be referred to as they were in the High Court.

Salient Facts

[3] The salient facts giving rise to the civil suit have been well summarised by the learned trial judge in the grounds of judgment and are reproduced as follows.

> 1. Plaintif-Plaintif dan Defendan-Defendan adalah merupakan waris-waris MUDA BIN HAJI DRAMAN (NO. K/P: 190405-11-5173/4028091) (selepas ini dirujuk sebagai si Mati) yang meninggal dunia pada 28 April 1985 dan telah meninggalkan harta-harta yang tak berwasiat.

2. Melalui Pemberian Surat Mentadbir Harta Pusaka di bawah Permohonan No. 44-16 Tahun 1988 (selepas ini dirujuk sebagai Surat Mentadbir tersebut) Defendan Pertama dan Kedua telah dilantik sebagai Pentadbir kepada harta-harta Si Mati bagi menguruskan/mentadbir harta-harta pusaka peninggalan Si Mati sebagaimana yang disenaraikan di dalam senarai Aset Si Mati yang dikepilkan bersama-sama Surat Mentadbir tersebut (selepas ini dinyatakan sebagai "senarai harta-harta tersebut").

3. Dan melalui Perintah Mahkamah Rendah Syariah Daerah Kuala Terengganu pada 11 Julai 2006 Hakim Mahkamah Rendah Syariah telah sabit pusaka simati mengikut Hukum Faraid yang hendaklah dibahagikan secara sekali gus kepada 192 bahagian yang mana ahli-ahli waris yang berhak mendapat bahagian dan kadar bahagian yang diperolehi masing-masing adalah seperti berikut:

1. KHAIRIL ANUAR BIN MUDA (NO. KP: 730828-11-5153) - 14/192
2. KAMARUZAMAN BIN MUDA (NO. KP: 700720-11-5197) - 14/192
3. MOHAMAD NAJID BIN MUDA (NO. KP:800713-11-5111) - 14/192
4. KHAIRUDDIN BIN MUDA (NO. KP: 640323-11-5263) - 14/192
5. AZAHA BIN MUDA (NO. KP: 581117-11-5193) - 14/192
6. MOHAMAD RAZALI BIN MUDA (NO. KP: 761017-11-5063) - 14/192
7. RABIAH BINTI MUDA (NO. KP: 560824-11-5042) - 9/192

8 KHAMSIAH BINTI MUDA (NO. KP: 650324-11-5002) - 7/192

9. KHAIRUNISAH BINTI MUDA (NO. KP: 670722-11-5268) - 7/192
10. KHAIRUL BARIAH BINTI MUDA (NO. KP: 760720-11-5490) - 7/192
11. KHAIRULSAFWATI BINTI MUDA (NO. KP: 790131-11-5502) - 7/192
12. KAMALIAH BINTI MUDA (NO. KP: 750707-11-5382) - 7/192
13. AISHAH BINTI MUDA (NO. KP: 801026-11-5704) - 7/192
14. ASMANORAINI BINTI MUDA (NO. KP: 820523-11-5186) - 7/192

15 ENDON BINTI SEMAN (NO. KP: 600524-11-5204) - 6/192

16. KHADIJAH BINTI YUSOP (NO. KP: 470128-11-5138) - 6/192
17. HAMIDAH BINTI MOKTAR (NO. KP: 550305-11-5172) - 6/192
18. SULONG BIN MUDA (NO. KP: 501225-11-5147) - 14/192
19. RAMLI BIN MUDA (NO. KP: 530713-11-5237) - 18/192

4. Semasa hayatnya simati memiliki dua perniagaan Stesen Minyak Shell di Cabang Tiga dan Kuala Nerus di mana Stesen Minyak Shell di Cabang Tiga dibina di atas hartanah milik Shell (simati hanya milik perniagaan sahaja) manakala Stesen Minyak Shell di Batu Enam Kuala Nerus dibina di atas hartanah milik simati (simati memiliki perniagaan dan hartanah tersebut).

5. Defendan pertama dan kedua selanjutnya telah membuat satu surat perjanjian pada 12 December 1991 yang ditandatangani oleh plaintif kelima belas, plaintif keenam belas, plaintif ketujuh belas, defendan pertama dan defendan kedua yang antara lain termanya ialah:

5.1 Stesen Minyak (Shell) Cabang Tiga diserahkan kepada pihak Ketiga yang diwakili oleh Plaintif Keenam Belas.

5.1.1 Sebagai bayaran di atas penyerahan tersebut pihak Ketiga akan membayar hutang bank sebanyak RM150,000.00.

5.1.2 Pihak Ketiga akan membayar pendahuluan sebagaimana yang akan ditetapkan oleh mesyuarat dan juga membuat bayaran ansuran sebanyak RM3,000.00 sebulan sehingga jelas hutang bank sebanyak RM150,000.00 tersebut.

5.1.3 Dengan itu semua pihak lain akan melepaskan segala tuntutan dan kepentingan mereka di atas stesen tersebut.

5.2 Stesen Minyak Shell Kuala Nerus (Batu Enam) diserahkan kepada Defendan Kedua.

5.2.1 Sebagai bayaran di atas penyerahan tersebut Defendan Kedua akan membayar hutang bank sebanyak RM450,000.00.

5.2.2 Defendan Kedua akan membayar pendahuluan sebagaimana yang akan ditetapkan oleh mesyuarat dan juga akan membuat bayaran ansuran sebanyak RM3,000.00 sebulan sehingga jelas hutang bank sebanyak RM450,000.00 tersebut.

5.2.3 Dengan itu semua pihak lain akan melepaskan segala tuntutan dan kepentingan mereka di atas Stesen tersebut.

5.3. Defendan Kedua akan memberi pinjaman bulan kepada yang berikut:

5.3.1 Kamaliah - RM80.00

5.3.2 Mohamad Razali - RM80.00

5.3.3 Mohammad Najid - RM80.00

5.3.4 Aishah - RM80.00

5.3.5 Asma - RM80.00

6. Ketika Perjanjian tersebut dibuat umur Plaintif Pertama sehingga Plaintif Keempat Belas ialah:

6.1 KHAIRIL ANUAR BIN MUDA (NO. KP: 730828-11-5153) - 18 tahun

6.2 KAMARUZAMAN BIN MUDA (NO. KP: 700720-11-5197) - 21 tahun

6.3 MOHAMAD NAJID BIN MUDA (NO. KP: 800713-11-5111) - 11 tahun

6.4 KHAIRUDDIN BIN MUDA (NO. KP: 640323-11-5263) - 27 tahun

6.5 AZAHA BIN MUDA (NO. KP: 581117-11-5193) - 33 tahun

6.6 MOHAMAD RAZALI BIN MUDA (NO. KP: 761017-11-5063) - 15 tahun

6.7 RABIAH BINTI MUDA (NO. KP: 560824-11-5024) - 35 tahun

6.8 KHAMSIAH BINTI MUDA (NO. KP: 650324-11-5002) - 26 tahun

6.9 KHAIRUNISAH BINTI MUDA (NO. KP: 670722-11-5268) - 24 tahun

6.10 KHAIRUL BARIAH BINTI MUDA (NO. KP: 760720-11-5490) - 15 tahun

6.11 KHAIRUL SAFWATI BINTI MUDA (NO. KP: 790131-11-5502) - 12 tahun

6.12 KAMALIAH BINTI MUDA (NO. KP: 750707-11-5382) - 16 tahun

6.13 AISHAH BINTI MUDA (NO. KP: 801026-11-5704) - 11 tahun

6.14 ASMANORAINI BINTI MUDA (NO. KP: 820523-11-5186) - 9 tahun

[4] Many years later in 2014, the plaintiffs filed the instant suit seeking for a declaration that the agreement dated 12 December 1991 ("1991 agreement"), which was signed by the fourth, 15th, 16th, and 17th plaintiffs and both the defendants, was invalid and null and void. They also sought for an order that the administrators of the estate of the deceased, Muda bin Draman, be authorised to take control of the two petrol stations in question and the profits from the business be divided among the plaintiffs and the defendants according to their entitlement as declared in the *hukum faraid* dated 11 July 2006 after deducting all costs and expenses incurred.

At The High Court

[5] At the High Court, several issues were raised and considered by the learned trial judge. Firstly, the learned judge decided that the plaintiffs' claim was barred by the Limitation Act 1953 ("LA 1953") as it was outside the six-year period set out in s. 6 of the LA 1953. Secondly, the court also declared that the 1991 agreement was valid and binding on all the parties even though eight of the beneficiaries were minors at the time the agreement was signed. The main reason afforded by the learned judge was that the mothers of the minors had signed the 1991 agreement on behalf of the minors.

[6] Thirdly, it was decided that the business of the two petrol stations in Kuala Nerus and Chabang Tiga rightfully belonged to the defendants as they had complied with the terms of the 1991 agreement and had paid off all the outstanding debts in respect of the businesses after the death of the deceased. The learned judge considered that the said businesses no longer formed part of the estate of the deceased as the licence held by the deceased in respect of the businesses ended with his death.

[7] The learned judge also found that the plaintiffs' claim was an afterthought and was unreasonable after the plaintiffs themselves had benefited from the 1991 agreement. Hence, the claim of the plaintiffs was dismissed and the counterclaim of the defendants, for a declaration that the plaintiffs had no interest in the businesses, was allowed.

The Instant Appeal

[8] Before us, the decision of the learned trial judge was assailed on a number of issues. The first issue concerned the learned judge's finding that the plaintiffs' claim was barred by limitation. In this respect, the learned judge noted that the 1991 agreement was entered into on 12 December 1991 and the plaintiffs only filed their claim on 5 November 2014, more than 20 years later. The learned judge agreed that the claim was barred by s. 6 of the Limitation Act 1953.

[9] On this score, learned counsel for the appellants contended that the learned judge was in error as it was not s. 6 but s. 22(1)(b) of the LA 1953 which was applicable to the present case. Now, s. 22 of the LA 1953 provides as follows:

> Limitation of actions in respect of trust property
>
> 22. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action:
>
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> (2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:
>
> Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

[10] It was plain that, in this case, the action commenced by the plaintiffs was an action by beneficiaries to recover trust property from a trustee by virtue of s. 22(1)(b) of the LA 1953 (see *Loo Cheng Suan Sabrina v. Khoo Oon Jin Eugene* [1994] 1 LNS 285; [1995] 1 MLJ 115; *Panchanath Ratnavale v. Sandra Segara Mahalingam & Ors* [2012] 1 LNS 167; [2012] 5 MLJ 109). The trust property in the form of the business of the two petrol stations was still in the possession of the trustees even though no allegations of fraud were imputed on the defendants.

[11] The upshot is that no limitation period applies. This much was also conceded by learned counsel for the respondents. We are therefore constrained to hold that the learned judge was plainly wrong in his finding that the plaintiffs' action was barred by limitation.

[12] The second ground raised by the appellants was that the learned judge was wrong in his finding that the 1991 agreement was valid and binding on all the parties. Specifically, the contention was that at the time the 1991 agreement was signed, eight of the beneficiaries were minors who had no capacity to enter into a contract.

[13] In this context, s. 11 of the Contracts Act 1950, among others, provides that only persons who are of the "age of majority" are competent to contract. There was some initial controversy in the development of the law regarding the age of majority which is not relevant to the current proceedings as much of the issues raised were later settled with the coming into force of the Age of Majority Act 1971. Under s. 2 of this Act, the minority of all males and females within Malaysia ceases at the age of 18 years and "every such male or female attaining that age shall be of the age of majority".

[14] So what is the effect of a contract entered into by a minor? The Privy Council, in an appeal from India, in the case of *Mohori Bibee v. Dhurmodas Ghose* (1903) 30 Cal 539, held that the effect of ss. 10 and 11 of the Indian Contracts Act (in *pari materia* with our ss. 10 and 11 of the Contracts Act 1950) is that a contract entered into by a person who has not attained majority is not voidable but void. Our Federal Court in *Leha Jusoh v. Awang Johari Hashim* [1977] 1 LNS 59; [1978] 1 MLJ 202 followed the said Privy Council's decision and held that the court could not enforce the agreement entered into by a minor as it was void *ab initio*.

[15] Appreciating this conundrum, the learned judge in the instant case, however, accepted that with their mothers' signature to the 1991 agreement on behalf of the minors, the minors were bound by the terms of that agreement. Was he right? The law in this context appears to have developed

differently in different jurisdictions. In any event, in Malaysia, this issue is now covered by statute in the form of s. 15 of the Guardianship of Infants Act 1961 ("GIA 1961") which reads:

> Limitation of guardian's powers
>
> 15. (1) A guardian of the property of an infant shall not, without the leave of the Court or a Judge:
>
> (a) sell, charge, mortgage, exchange, or otherwise part with the possession of any of the movable or immovable property of the infant; or
>
> (b) lease any land belonging to the infant for a term exceeding one year.
>
> (2) Any disposal of an infant's property in contravention of this section may be declared void, and on such declaration the Judge may make such order as appears requisite for restoring to the infant's estate the property so disposed of.
>
> (3) The Court or a Judge shall not make any order under subsection (2) unless it is necessary or advisable in the interests of the infant.

[16] This provision came up for deliberation in *Mohd Ali Jahn Yusop Sahibjahn & Anor v. Zaleha Mat Zin & Anor* [1995] 1 CLJ 533. In that case, by an agreement executed in 1948, the plaintiff's father, who was registered as guardian in the title of a piece of land, sold the said land to the defendant's father (purchaser). By the agreement, the plaintiff's father guaranteed that the plaintiffs, who were minors then, would execute the transfer of the land to the purchaser when they attained the age of majority. Title to the land and possession were given to the purchaser. The plaintiffs, after attaining the age of majority, refused to execute the transfer of the said land to the purchaser's widow and instead sued her for vacant possession. The widow counterclaimed for specific performance or damages for breach of contract.

[17] After a trial, the High Court held that where a minor himself signs an agreement for sale of land, it is void *ab initio* and the agreement is absolutely void. The court also held that in light of s. 15 of the Guardianship of Infants Ordinance 1934 (now repealed and replaced by the 1961 Act), which required the guardian to seek leave of the court or a judge in order to deal with the land, the purported sale was void for reason that no such leave was sought. The agreement was therefore held to be unenforceable.

[18] Reverting to the instant case, the mothers who signed on behalf of the minors were obviously doing so as guardians of the property of the minors. In entering into the 1991 agreement, the guardians were involved in the disposal of the minors' property. It was therefore plain that s. 15 of the GIA 1961 applied in the circumstances and since no leave of the court was obtained for such disposal of the minors' property, the disposal as set out in the 1991 agreement was void.

[19] We come now to the final issue which merited consideration. This concerned the finding by the learned judge that the business of the two petrol stations ended with the death of the deceased and the subsequent setting up of the new business by the defendants. What remained, it was found by the learned judge, were only the debts due as left behind by the deceased which had to be dealt with by all the beneficiaries. In other words, the profits generated by the new business set up by the defendants were no longer tied to the estate of the deceased and hence the said profits could not be divided among the beneficiaries as contended by the plaintiffs.

[20] With respect, we are compelled to observe that this finding overlooks the important fact that in the case of the Kuala Nerus petrol station, the deceased had used his own land to develop the station. It was only the petrol station at Cabang Tiga which sat on the land of the petrol company called Shell. It cannot be denied that the land of the deceased, on which the Kuala Nerus petrol station was situated, became estate property upon the death of the deceased. It was also obvious to us that the same business that was conducted by the deceased before his death continued but with the variations as requested by Shell. Hence, the learned judge was plainly in error when he declared that the business, and consequently the land on which the business was situated, was not part of the estate.

Conclusion

[21] In the circumstances, and for the reasons we have given, we were of the view that the decision of the High Court was plainly wrong and that appellate interference was warranted. Accordingly, we allowed the appeal and set aside the order of the High Court. In substitution, we allowed the appellants' claim as set out in para. 18(a), (b) and (c) of the statement of claim. In respect of prayer 18(b), and in particular the claim for the division of profits among the beneficiaries, we held for the sake of convenience and clarity that the division of profits should begin from 11 July 2006 which was the date of the *hukum faraid*.

[22] Lastly, the respondents were ordered to pay to the appellants costs here and below in the sum of RM15,000 subject to payment of allocator fees. The deposit was to be refunded to the appellant.